

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

April 26, 2005

GSBCA 16598-RELO

In the Matter of LaVERLE E. OLIVIER

LaVerle E. Olivier, Lakewood, CO, Claimant.

Keith Beartusk, Director, Rocky Mountain Regional Office, Bureau of Indian Affairs,
Department of the Interior, Billings, MT, appearing for Department of the Interior.

DeGRAFF, Board Judge.

When a matter is specifically provided for by federal statute, we can use our administrative procedures to review a claim regarding the matter, even though the claimant is covered by the terms of a collective bargaining agreement. An employee who is transferred in the Government's interest from one post of duty to another within the United States is eligible to be reimbursed for real estate transaction expenses.

Background

In 2002, LaVerle E. Olivier was employed by a federal agency in South Dakota. On February 20, 2002, the Department of the Interior posted a vacancy announcement for a position in Montana. The announcement did not mention whether Interior would pay relocation benefits to the person selected to fill the vacancy. On April 5, Interior sent a letter to Ms. Olivier, saying it had tentatively selected her to fill the vacancy. The letter did not mention relocation benefits. Ms. Olivier accepted the tentative offer on April 16. On May 16, Interior sent Ms. Olivier a written offer of employment. This letter said, "There will be no Real Estate costs included with the move." On May 20, Ms. Olivier signed an employment agreement, which provided she would remain in government service for twelve months following her appointment to the position in Montana. Interior issued a travel authorization to Ms. Olivier on May 22. The authorization stated, "No real estate costs allowed."

The effective date of Ms. Olivier's appointment to the position in Montana was June 30, 2002. The agency says Ms. Olivier was covered by a collective bargaining agreement at her duty station in Montana, and Ms. Olivier does not dispute this. A Standard Form 50-B, Notification of Personnel Action, prepared in connection with the appointment

said, "This change of official station is in the interest of the govt. and not for your convenience."

Interior paid the travel and transportation costs Ms. Olivier incurred in connection with her relocation to Montana and paid to ship her household goods to her new duty station. Interior also paid for temporary storage of Ms. Olivier's household goods and reimbursed her temporary quarters subsistence expenses. Shortly after moving to Montana, Ms. Olivier sold her house in South Dakota and purchased a house in Montana. She did not ask Interior to reimburse her real estate transaction expenses.

In 2004, in the course of a conversation with another agency employee, Ms. Olivier learned she might have been eligible to be reimbursed for her real estate transaction expenses. The employee told Ms. Olivier when an agency transfers an employee in the interest of the Government, there are certain expenses the agency must pay no matter what the employee's travel authorization says. Ms. Olivier consulted the Federal Travel Regulation and found it supported her co-worker's statements. In August 2004, Ms. Olivier asked Interior to reimburse the real estate transaction costs she incurred in connection with her transfer. Interior decided to deny the claim, and Ms. Olivier asked us to review Interior's decision.

In its submission to us, Interior explained it denied Ms. Olivier's claim because she knew when she relocated that Interior would not reimburse her real estate transaction costs. Interior also explained it reimburses employees for real estate transaction expenses only if funds are available, and there were no funds available to reimburse Ms. Olivier's expenses.

The employee who gave Ms. Olivier the advice regarding her real estate transaction expenses also reviewed Ms. Olivier's vouchers for her other relocation expenses and concluded Interior owed Ms. Olivier an additional \$679.15 for en route meal expenses, temporary quarters subsistence expenses, and related withholding taxes. Although Ms. Olivier submitted a claim for this amount, Interior never provided a response except to tell Ms. Olivier's co-worker the claim would not be paid because no funds were available to pay it. Ms. Olivier understood this to be a denial of her claim and asked us to review it. In its submission to us, Interior did not address this claim.

Discussion

When an employee who is covered by a collective bargaining agreement submits a claim to us for review, we must determine whether the claim constitutes a "grievance," as that term is used in 5 U.S.C. § 7103(a)(9) (2000). If it does not, we can use our administrative procedure to review the claim. If it does, we can review the claim if the collective bargaining agreement excludes the matter from its coverage.

A grievance does not include a complaint concerning a matter specifically provided for by federal statute. 5 U.S.C. § 7103(1)(14). A matter is specifically provided for by federal statute only to the extent the governing statute leaves no discretion to the agency. *International Ass'n of Machinists and Aerospace Workers v. Treasury*, 50 FLRA 677, 681-85 (1995), *aff'd mem. sub nom. Bureau of Engraving and Printing v. FLRA*, 88 F.3d 1279 (D.C. Cir. 1996). To the extent a statute leaves discretion with the agency, a matter is not

specifically provided for by federal statute, and a complaint concerning the matter is a grievance which must be resolved according to the procedures contained in the collective bargaining agreement, unless the agreement excludes the matter from its coverage.

As explained below, we can review Ms. Olivier's claim regarding her eligibility for real estate transaction expenses because this claim does not constitute a grievance. We are not sure whether we can review her claim for \$679.15 because although this claim constitutes a grievance, we do not know whether the collective bargaining agreement excludes this matter from its coverage. We grant Ms. Olivier's claim for eligibility for real estate transaction expenses and return the claim for \$679.15 to her and Interior.

Real estate transaction expenses

Ms. Olivier is asking us to review Interior's decision that she is not eligible to be reimbursed for real estate transaction expenses. Interior never reviewed the individual expenses which make up Ms. Olivier's claim for real estate transaction expenses and she is not asking us to review the particular expenses which make up her claim.¹

The claim Ms. Olivier asks us to review does not constitute a grievance because 5 U.S.C. § 5724a(d) specifically provides for reimbursing the real estate transaction expenses of an employee who is transferred in the interest of the Government from one official station to another within the United States. Agencies have discretion to decide whether employees have been transferred from one official station to another and to decide whether transfers are in the Government's interest. But, when an employee is transferred in the Government's interest from one official station to another within the United States, the law makes the employee eligible for reimbursement of real estate transaction expenses and leaves agencies with no discretion to decide otherwise. Because Interior does not dispute whether Ms. Olivier was transferred in the interest of the Government from one official station to another within the United States, the law does not give Interior the discretion to decide she is not eligible for reimbursement of her real estate transaction expenses. Thus, her claim is not a grievance and we can review it.

We reject Interior's contention that Ms. Olivier is not eligible to be reimbursed because she knew when she transferred to Montana that Interior did not intend to reimburse her real estate transaction expenses. As the Comptroller General explained more than twenty years ago:

The reimbursement of an employee for relocation expenses incurred incident to a transfer in the interest of the Government is a right pursuant to law and regulations. Thus, the fact that an employee may evidence his acquiescence in the agency's determination that he forgo reimbursement of transfer expenses does not preclude reimbursement if the transfer is found to be in the interest of the Government.

¹ The statute does not specifically provide for reimbursement of any particular real estate transaction expenses, so a claim for specific expenses would constitute a grievance.

Bruce E. Stewart, B-201860 (Aug. 27, 1982). We agree with the Comptroller General's conclusion. *Ross K. Richardson*, GSBCA 15286-RELO, 00-2 BCA ¶ 31,131. Because Interior attempted to impose an invalid condition upon Ms. Olivier's transfer, she would not be bound by the condition even if she had consented to it.

We also reject Interior's contention that Ms. Olivier is not eligible to be reimbursed due to a lack of funds. "Budget constraints cannot form the basis for denying an employee relocation expenses if his transfer has been found to be in the interest of the Government." *David C. Goodyear*, 56 Comp. Gen. 709 (1977). We agree with this conclusion, also. *Leslie A. Jones*, GSBCA 16347-RELO, 04-1 BCA ¶ 32,585. Interior's lack of funds does not justify its conclusion that Ms. Olivier is not eligible to be reimbursed.

Because Ms. Olivier's transfer was in the interest of the Government and was between official duty stations within the United States, she is eligible to be reimbursed for real estate transaction expenses. Interior is required by law to consider the particular expenses she claims and to reimburse them in accordance with the regulations in effect on the date she reported for duty in Montana.

The Claim for \$679.15

Ms. Olivier's claim for en route meal expenses and temporary quarters subsistence expenses constitutes a grievance because these matters are not specifically provided for by federal statute. Even so, we could review this claim if the collective bargaining agreement excluded the matters from its coverage. Despite our best efforts, however, we have not been able to obtain a copy of the agreement. If the parties find a copy and if it excludes en route meal expenses and temporary quarters subsistence expenses from its coverage, Ms. Olivier can resubmit her claim to us for review.

MARTHA H. DeGRAFF
Board Judge